IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 513 OF 2000

Salim Yamin Shaikh, age 24 years,]
Convict Prisoner No.C-11352,]
At present in Yerawada Central Prison, Pune – 411 006.] .. Appellant

Versus

The State of Maharashtra,]
(at the instance of Bandra Police Station in C.R.No.87/98.] .. Respondents

Ms. Prajakta P. Shinde for the appellant/accused.

Mrs. U.V. Kejriwal, A.P.P., for the State.

CORAM: V.G. PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED: 24TH SEPTEMBER, 2004.

ORAL JUDGMENT: *[Per Anoop V. Mohta, J.]*

1. This is an Appeal filed by the appellant/accused against the impugned judgment and order dated 2nd May, 2000, passed by the Additional Sessions Judge, Greater Bombay, and prayed for acquittal. The appellant has

been convicted under Section 302 of the IPC for the murder of his wife Smt. Shabnam Salim Shaikh and, therefore, he has been sentenced for rigorous imprisonment for life.

2. On 6th March, 1998, at Nargis Dutt Nagar Zopadpatti, K.S. Road, Reclamation, Bandra (West), Mumbai – 400 050, the appellant-accused, as per prosecution's case, hit his wife Smt. Shabnam Salim Shaikh with an iron rod on her head, between 12.30 a.m. And 1.45 a.m. The said assault was in the presence of the friend of the accused, Jamaluddin Fakhruddin Shaikh, who is the complainant in the present case. The accused, however, took his injured wife to Bhabha Hospital, Bandra, for the treatment. The treatment could not be completed because of bad condition of the deceased. Therefore, for the purpose of neurosurgery and for other aspects, she was transferred to the KEM Hospital. The accused and his friend, along with the doctor from Bhabha Hospital, accompanied the deceased. The deceased succumbed to the injuries. Based on the information of the complaint, the investigation proceeded. The Spot Panchanama was drawn. The clothes of the deceased were also seized. The post mortem was completed. After receipt of the Chemical Analyzer's Report and the completion of investigation, the accused was charge sheeted. The accused' sstatement was recorded under Section 313 of the Criminal Procedure

Code. The accused has not examined any witness. He denied the charges in toto. The prosecution has examined, in all, 18 witnesses. The learned Additional Sessions Judge held that the death of Smt. Shabnam Salim Shaikh was homicidal and accused has committed the offence in question. Therefore, this Appeal.

3. We have heard the Advocates for the appellants and the A.P.P. for the State. We have gone through the grounds as raised in the Appeal, as well as, the submissions made by the Advocate for the appellant. We have also noted the contention raised by the A.P.P. in support of the judgment. We have been taken through all the testimony and the record of the case. We have re-appreciated the same. We are of the view that the order of conviction is unsustainable as there is no direct evidence to support the prosecution' scase. The material and the evidence placed on the record by the prosecution are insufficient as the same dis-link the chain of events on various occasions and, therefore, as prosecution has failed to prove the case beyond reasonable doubt, we are acquitting the appellant for the following reasons.

4. The complainant – Jamaluddin Fakhruddin Shaikh in whose presence, as per the prosecution case, appellant had assaulted his wife

Shabnam, has not been examined. The case of the prosecution is that he was not traceable. This friend, according to the prosecution, had witnessed the assault. He was throughout with the appellant, as well as, the victim in both the hospitals, initially when the victim was admitted in Bhabha Hospital and the second time when he was further admitted in KEM hospital. Whatever may be the reason, in absence of the basic prosecution case of assault by the appellant with the rod in presence of this friend, looses its strength, as well as, its foundation.

5. The motive of the appellant to kill or attack or assault the deceased Shabnam is also missing. Nothing is placed on the record to justify or support their case in this regard. The presence of the appellant with the victim throughout in the hospitals, disproves the prosecution case of any motive of the appellant.

6. The homicidal death is not at all in dispute. It is duly proved by corroborative medical evidence. The cause of death by the head injury is also proved. The question is in the absence of any motive, it is difficult to convict the appellant-accused under this situation.

7. We have also noted that the deceased was brought firstly to the Bhabha Hospital and the entry was recorded that this patient was brought by the husband. It is also mentioned that the husband assaulted on the left side. This entry is of dated 6th March, 1998. Therefore, as per this entry, she was admitted in the said hospital on 6th March, 1998. PW5 – Dr. Jagdish Natwarlal Pattni deposed that the history was given by the husband. This statement was recorded at about 3.15 a.m. Of 6th March, 1998. Thereafter, she was transferred to KEM Hospital. The history also records that there was alleged assault by some one at about 1.30 a.m. We have also noted that PW4 – Dr. Aniruddha Vijay Deshpande, who was attached to KEM hospital at the relevant time on 6th March, 1998, deposed that one Shabnam was brought to the hospital by her husband, a friend and accompanied by a doctor. The history was given as assault by an iron rod by her husband. He further deposed that she died on 12th March, 1998. She was throughout unconscious. In the cross-examination, however, this witness answered that Dr. Samir of Bhabha Hospital, Bandra, had accompanied the patient, but this Dr. Samir of Bhabha Hospital was not examined by the prosecution. There is no reference about the marriage of this lady. The appellant, in fact, denied the marriage. The history was also not recorded by this doctor. This dis-linked material, according to us, does not support the

prosecution's case. Admittedly, no dying declaration was recorded in this matter. There were several injuries on the body of the deceased. PW6 - Dr. Walter Francis Vaz, who has conducted the autopsy, stated that such injuries were also possible by coming in contact against any hard and blunt substance. The injuries were also possible by an accident. This doctor was also unable to give the name of the informant. PW7 – PSI Rajendra Pandurang Mulik also refers to the presence of the accused and his friend viz. Jamaluddin at the bed-side of the deceased. However, the version of Jamaluddin remained uncorroborated even though it was recorded and treated as FIR. The spot in question, was a hut, which was occupied by the accused and the complainant. The article, or the weapon in question, was recovered, not at the instance of the accused, but at the instance of the complainant. The Spot Panchanama was also recorded at the instance of the complainant. Even though the articles were identified, it is not sufficient to link the accused with the said offence. Such recovery, at the instance of the complainant, cannot be relied upon. Therefore, the recovery of the article in question also raises doubts and cannot be relied upon to convict the appellant.

8. In view of this, as admittedly there as no eye witness to the incident and admittedly, as the complainant who had lodged the FIR, could not be

examined by the prosecution and as the panchanama of the spot of scene, as well as, the recovery of the articles were at the instance of the complainant and in view of the un-supporting evidence, as referred above, we are of the view that the prosecution failed to prove the case against the appellant, beyond reasonable doubt. The evidence, according to us, is not sufficient to pin-point that the accused must have committed this offence and no one else. It cannot be said beyond reasonable doubt that the present accused assaulted his wife with an iron rod and realising the consequences, took her to Bhabha Hospital, Bandra. Therefore, we are not agreeing with the reasoning given in paragraphs 52 to 59 of the impugned judgment. We are, therefore, allowing this Appeal.

9. For the reasons given above, the Appeal is allowed. The judgment and order passed by the Additional Sessions Judge, Greater Bombay, dated 2nd May, 2000, is quashed and set aside. The appellant is acquitted. He be released forthwith, unless required for any other offence.

10. We quantify the fees to be paid to the Advocate appointed for the appellant and the learned A.P.P. at Rs.1,500/- for this Appeal.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]